

GIPSA's Farmer Fair Practices Rules - FAQs:

Q: What practices are the Farmer Fair Practices rules designed to prevent?

The four largest processors in the poultry sector in this country control 51 percent of the broiler market and 57 percent of the turkey market. In part due to this concentration, poultry growers often have limited options for processors available in their local communities: 52 percent of growers have only one or two processors in their state or region to whom they can provide grower services. That means processors can often wield market power over the growers, treating them unfairly, suppressing how much they are paid, or pitting them against each other.

For example, if a chicken grower attempts to organize other chicken growers to bargain for better pay or publicly expresses unhappiness with the way they are being treated by a processor, they can suffer retaliation. Processors can require growers to make investments that are not economically justifiable for the grower, or can terminate contracts with little notice. And because in contract growing the processors own the birds and provide inputs like feed, they can choose to provide poultry growers with bad feed or sickly birds that have a higher mortality rate, which cuts deeply into a grower's opportunity to earn income on those birds.

In hearings held in 2010, we heard from chicken growers who were promised a long-term business relationship but were soon bullied into signing narrower and narrower contracts until their business was unsustainable, who felt extorted into making expensive upgrades under threat of not being provided chickens to grow, and who tried to explore opportunities with other processors but were met with intimidation and discrimination.

We heard from award winning growers who talked about their contract being abruptly terminated after 23 years of raising chickens in retaliation for refusing to make upgrades demanded by the processor. So we are proposing to strengthen enforcement of regulations regarding additional capital investments.

We heard from growers' experience with tournament systems who felt like they had zero input into the quality or the type of birds they received, yet were expected to perform their contractual duty of raising the best flock possible. So, we are proposing criteria that GIPSA would use in determining whether a live poultry dealer is using a ranking system in an unfair manner. Among other things, these criteria would address whether a dealer provides sufficient information to enable a grower to make informed business decisions.

We also heard from growers who tried to verify that their birds were being properly weighed and recorded but were told that the poultry dealer would terminate their contract if they pressed the issue. So, we are proposing rules that would help ensure fairness in scales and weighing.

We heard from growers who, when they tried to explore opportunities with other processors, were met with intimidation and discrimination. So, our proposal includes consideration of whether a grower who has engaged in lawful communication, association, or assertion of their rights is treated differently because of these protected activities.

In this country, we expect fair treatment and fair wages for services rendered. But for chicken growers in particular, the deck is stacked against them and they have nowhere to turn if they are unfairly cut out the business. Chicken growing houses not only cost millions but are highly specialized and cannot be converted to other uses. When growers and their family businesses are retaliated against, they are at very real risk of crippling bankruptcy.

Q: What do the rules do to protect farmers?

The interim final rule will affirmatively establish the Department's long time position that it is not necessary to demonstrate that an unfair practice harms the entire market in order to prove a violation of the Packers and Stockyards Act (P&S Act). Such overly broad interpretations have put family farmers at a disadvantage for decades when pursuing their rights under the Act. This provision is necessary for GIPSA to more fully enforce the P&S Act – as well as current regulations and the two newly proposed regulations. Requiring farmers to prove a harm to competition across an entire industry in order to get compensated for being treated unfairly was an impossibly high bar in so many cases where they deserved to be protected.

The proposed rule addressing unfair practices seeks to clarify what conduct would violate the P&S Act. These clarifications would help protect farmers from retaliation, and from contract terms that would limit legal rights and remedies.

- Specifically, this proposal would strengthen enforcement of existing regulations regarding: records that live poultry dealers must provide growers; suspension of the delivery of birds by poultry dealers to growers; additional capital investment; allowing for a reasonable period of time for growers to remedy a breach of contract before that contract is terminated; protections for farmers from the abuse of arbitration procedures; ensuring fairness in scales and weighing as well as in electronic grading devices.
- This proposal would also establish criteria that GIPSA would consider when determining whether alleged conduct or actions constitute undue or unreasonable preference or advantage.
 - These criteria include consideration of: whether a producer or grower who has engaged in lawful communication, association, or assertion of their rights is treated differently because of these protected activities; whether this disparate treatment is – without reasonable basis – because of an alleged violation of a law or rule, or is because of an arbitrary reason unrelated to the poultry or livestock operation, or is because the producer or grower is a member of a protected group.
 - These criteria also include consideration of a demonstrable business justification by the processors.

The proposed rule addressing poultry grower ranking systems (also known as a tournament system) would establish criteria that GIPSA would consider in determining whether a live poultry dealer has engaged in a pattern or practice to use a poultry grower ranking system to compensate poultry growers in an unfair manner.

- These criteria include: whether a live poultry dealer provides sufficient information to enable a poultry grower to make informed business decisions; whether growers are provided inputs of comparable quality and quantity; and whether other production variables are similar for all growers in the settlement group.
- These criteria also include whether the live poultry dealer has demonstrated a legitimate business justification for actions that might otherwise be unfair.

Q: How do the rules impact special marketing arrangements like value-added contracts such as breed certification, source verification, or production method certification?

GIPSA never intended for the 2010 proposal to preclude the use of alternative marketing arrangements, but to respond to comments and to provide further assurance that packers can continue to offer premiums

to livestock producers to encourage the production of meat products valued by consumers, GIPSA's new proposal has been significantly modified from the 2010 proposal.

One of the provisions in the 2010 proposed rule that contributed to the concerns was a provision that described as an unfair practice, "Paying a premium or applying a discount on the swine production contract grower's payment or the purchase price received by the livestock producer from the sale of livestock without documenting the reason(s) and substantiating the revenue and cost justification associated with the premium or discount". The rules do not include this provision.

Commenters also expressed their concerns that the documentation requirement would be so difficult to meet that packers would simply abandon premiums for value-added livestock, which allow for products such as Angus beef or process-certified meats such as pasture raised. Since the rules do not require the documentation, they would not undermine innovation to source the certified and verified meat products that consumers demand.

Q: How do the rules affect innovative contracting models for packers and swine contractors?

The Farmer Fair Practices Rules are carefully designed to continue to allow packers or swine contractors to offer innovative contracts.

Q: How are these rules different or better from what was proposed in 2010?

The Farmer Fair Practices Rules reflect feedback received in over 60,000 comments and rigorous additional economic analysis conducted by GIPSA in collaboration with the USDA Office of the Chief Economist.

They are more narrowly focused and are intended to provide clarifying guidance to industry regarding their interactions with farmers.

They provide further assurance that packers may continue to offer premiums to livestock producers to encourage the production of meat products valued by consumers.

They also are carefully designed to continue to allow packers or swine contractors to offer innovative contracts.

The proposal regarding poultry grower ranking systems should provide sufficient flexibility to enable live poultry dealers to develop and implement poultry grower ranking systems that will be fair to poultry growers.

Q: Is this what Congress directed you to do?

The Farmer Fair Practices Rules have been issued in direct response to the 2008 farm bill. Congress directed the Secretary to develop criteria to consider in determining whether certain actions by packers, swine contractors, and live poultry dealers violated the Packers and Stockyards Act (P&S Act). Congress specifically mandated criteria regarding undue or unreasonable preference or advantage, and the Department was unable to complete that work until Fiscal Year 2016. GIPSA is proposing a list of conduct that violates the Act without a finding of harm to competition. This provision is necessary to assure that GIPSA can enforce criteria required by the 2008 farm bill that pertain to live poultry dealers without having to prove harm to competition.

The proposal regarding poultry grower ranking systems will help assure that live poultry dealers using a ranking system to calculate payment to poultry growers will operate the ranking system in a manner that is fair and equitable to growers.

Q: Why didn't you finalize all of the rules?

GIPSA reviewed the comments to the rule proposed in 2010 and determined that we should not pursue some provisions in that proposed rule. We responded to comments and prioritized the provisions that will assure the greatest protection for farmers with the least disruption to industry. These changes deserve a period of robust comment.

Q: Why did you finalize the scope provision?

The interim final rule addressing the scope of the P&S Act is essentially the same provision that was proposed in 2010. Interested parties thoroughly commented on the proposed rule during an extended comment period in 2010, and the legal situation regarding the need for this provision has not changed. Thus GIPSA determined that there was no need to repropose this rule.

However, given the significant level of stakeholder interest in this rule, the intervening six years, and in the interests of open and transparent government, GIPSA is publishing the rule as an interim final rule and providing a sixty day opportunity for public comment. After this comment period closes, GIPSA intends to publish a discussion document in the Federal Register that will include a discussion of any comments received and whether any amendments will be made to the rule.